

May 2, 2011

George Beattie
President
San Jose Police Officers' Association (SJPOA)
1151 North Fourth Street
San Jose, CA 95112

RE: SJPOA Negotiations

Dear George:

Thank you for the package proposal provided by the POA to the City during our meeting the afternoon of April 29, 2011. As you know, I was surprised to receive media inquiries regarding the POA's press conference about this proposal prior to conclusion of our meeting during which the proposal was being presented to the City's negotiating team for the first time.

This latest proposal from the POA includes a temporary one-time base pay reduction of 10% beginning July 1, 2011. This means that on June 30, 2012, all employees represented by the POA would receive a 10% wage increase. While we appreciate the temporary 10% pay reduction, it only lasts one year. If the City had a temporary cash flow problem, this proposal would meet the City's needs. However, the City's fiscal problem is a serious ongoing structural shortfall in which our expenditures are outpacing our revenues for the 10th consecutive year. This will continue unless we bring our expenses in line with our revenues.

The Fiscal Year 2011-2012 Proposed Operating Budget, which is being released today, unfortunately contains a significant number of layoffs of employees in every City department, including Police Officers. That budget assumes achieving the 10% ongoing total compensation reduction with the POA. If we do not achieve this, there will be additional significant layoffs of Police Officers, potentially over 150 additional layoffs. We must not continue this pattern. A one-time 10% pay reduction only puts off the problem for one year, instead of finding an ongoing solution. With a one-time reduction, those additional officers subject to layoff will just be subject to layoff again next year. We do not believe this is fair to those employees or to the residents of San Jose.

The City Council's direction regarding achieving 10% ongoing total compensation reductions through labor negotiations included all 11 bargaining units and City management. On Friday, the City reached the fifth Tentative Agreement with the City's Building Inspectors' Union (ABMEI) that achieves a 10% ongoing compensation reduction. Agreements like the ones reached with the San Jose Fire Fighters, the Association of Engineers and Architects, the City Association of Management Personnel, the Association of Maintenance Supervisory

Personnel and ABMEI will help us achieve a balanced budget that to the extent possible minimizes service reductions to the community we serve. The City employees that have already agreed to a 10% ongoing total compensation reduction understand that this continues until a different agreement is negotiated. Just like when we negotiate salary increases, those increases don't expire at the end of the contract. If we negotiate a one year agreement with the POA, we will soon start negotiating for a new contract, and the POA can propose to modify the 10% ongoing total compensation reduction at that time.

The City remains hopeful that an agreement can be achieved with the POA. To that end, please find enclosed the City's counter proposal for your consideration. As you will note, in an effort to reach an agreement with the POA in order to avoid further layoffs of Police Officers, we have omitted from this package many of the proposals that are very important to the City. What is left is equivalent to no more than what we have achieved with five other bargaining units. While we understand these reductions are difficult for employees, a 10% ongoing total compensation reduction is what many employees took last year and have agreed to make ongoing. Many of these employees make less than employees represented by the POA.

We hope that you will seriously consider the City's enclosed proposal in order to avoid the further layoffs of Police Officers. If this offer is not accepted, please note that the City retains the right to add additional proposals and the City is not formally dropping any of the proposals we currently have on the table with the POA.

Please feel free to contact me should you have any questions.

Sincerely,



Alex Gurza
Director of Employee Relations

Enclosure

cc: John Tennant, POA General Counsel
Jim Unland, POA Vice President
Franco Vado, POA Chief Financial Officer
John Robb, POA Board Member

**CITY OF SAN JOSE AND SAN JOSE POLICE OFFICERS' ASSOCIATION
CITY PACKAGE PROPOSAL**

TERM

July 1, 2011- June 30, 2012 (See Attached)

WAGES

See Attached

HEALTHCARE DUAL COVERAGE

See Attached

MODIFIED DUTY ASSIGNMENT

See Attached

CIVILIANIZATION/CONTRACTING OUT

See Attached

AIRPORT POLICE SERVICES OUTSOURCING

See Attached

SUBSIDY FOR PUBLIC TRANSIT

See Attached

HOUSEKEEPING

See Attached

SIDE LETTERS

- Sick Leave Payout
- Retirement Benefits for current and new employees
- Layoff
- Supplemental Retiree Benefits Reserve (SRBR)

LAYOFF REINSTATEMENT LISTS

See Attached

CITY OF SAN JOSE AND SAN JOSE POLICE OFFICERS' ASSOCIATION
CITY PACKAGE PROPOSAL

AGENCY FEE PROVISION

See Attached

This proposal is submitted in an attempt to reach a settlement. In the event the proposal is not accepted, the City reserves the right to modify, amend and/or add proposals.

2011 CITY OF SAN JOSE – POA NEGOTIATIONS

CITY PROPOSAL- TERM

ARTICLE 1 TERM

1.1 This Memorandum of Agreement (hereinafter, "Agreement") shall become effective July 1, ~~2010~~2011, except where otherwise provided, and shall remain in effect through June 30, ~~2011~~2012. No amendment or change to the provisions of this Agreement shall be valid or binding unless reduced to writing and signed by duly authorized representative(s) of the parties.

~~1.2 Effective July 1, 2010, through June 30, 2011, there shall be no layoffs of positions represented by the POA. Although there shall be no layoffs during this period, the parties understand that the Fiscal Year 2010-2011 Budget includes the elimination of positions represented by the POA.~~

~~For purposes of this section, layoff shall be defined as involuntarily leaving City employment due to budget reductions.~~

~~Any positions restored through one-time savings will restore positions for Fiscal Year 2010-2011 only. These positions will be eliminated on June 30, 2011.~~

2011 CITY OF SAN JOSE – POA NEGOTIATIONS

CITY PROPOSAL– WAGES

ARTICLE 5 WAGES AND PREMIUM PAY

5.1 Effective June 26, 2011, all salary ranges for employees represented by the POA shall be decreased by approximately 10%. This will result in the top and bottom of the range of all classifications represented by the POA being 10% lower. All employees will receive a 10% base pay reduction.

~~5.1 ONE-TIME ADDITIONAL RETIREMENT CONTRIBUTIONS~~

~~Effective June 27, 2010 through June 25, 2011, all employees represented by the POA will make an additional retirement contribution in the amount of 5.25% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make for the pension unfunded liability, which is defined as all costs in both the regular retirement fund and the cost-of-living fund, except current service normal costs in those funds. This additional employee retirement contribution would be in addition to the employee retirement contribution rates that have been approved by the Police & Fire Department Retirement Board. The intent of this additional retirement contribution by employees is to reduce the City's required pension retirement contribution rate by a commensurate 5.25% of pensionable compensation, as illustrated below:~~

Police and Fire Department Retirement (Police) (Fiscal Year 2010-2011)			
	City	Employee	Total
Current Contribution Rates	44.58%	15.57%	60.15%
Contribution Rates with Additional Employee Contributions	39.33%	20.82%	60.15%

~~Note: Additional contributions made by employees do not affect the retiree healthcare rates.~~

~~TREATMENT OF ADDITIONAL EMPLOYEE CONTRIBUTIONS~~

~~These contributions shall be treated in the same manner as any other employee contributions. Accordingly, the intent of these additional payments will be made on a pre-tax basis through payroll deductions pursuant to IRS Code Section 414(h)(2) and will be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.~~

~~IMPLEMENTATION OF ADDITIONAL RETIREMENT CONTRIBUTIONS AND MISSED CONTRIBUTIONS~~

~~It is the intent of the parties that the employees pay the entire annual amount of the additional retirement contributions for the 2010-2011 Fiscal Year. Since the additional employee contributions will not be implemented by June 27, 2010, when the additional employee contributions are implemented in the City's payroll system the Finance Department will compute the rate that will generate the total amount of additional retirement contributions over the~~

2011 CITY OF SAN JOSE – POA NEGOTIATIONS

~~remaining pay periods in the fiscal year as if the contribution rate had been implemented on June 27, 2010.~~

~~For example, if the additional contributions do not begin until August 22, 2010, (pay period #18) the additional employee contributions for each of the subsequent pay periods in the 2010-2011 Fiscal Year will be recalculated by the Finance Department so that 100% of the additional employee contributions are made by the end of the fiscal year.~~

~~The parties understand that in order to implement this provision, an amendment must be made to the Police & Fire Department Retirement Plan that requires an ordinance amending the San Jose Municipal Code. In addition, the parties understand that the City will request that the Police & Fire Department Retirement Board have its actuary confirm that an increase of the employee contribution will reduce the City's contribution rate by a commensurate amount.~~

CONTINGENCY PROVISION

~~In the event that the additional employee retirement contributions described above are not implemented for any reason by October 1, 2010, or the Police & Fire Department Retirement Board's actuary concludes that the City's contribution rate could not be reduced by a commensurate amount, the equivalent amount of total compensation shall be taken as a base pay reduction and will increase on a pro-rata basis over the remaining pay periods in the fiscal year to achieve the equivalent total compensation reduction.~~

~~In the event that the additional employee retirement contributions described above are ceased for any reason thereafter, or the Police & Fire Department Retirement Board's actuary concludes that the City's contribution rate could not be reduced by the commensurate amount after beginning such deductions, the equivalent amount of total compensation shall be taken as a base pay reduction.~~

- 9.1 Employees shall receive a uniform allowance not to exceed \$675 annually. Payment shall be made during the first two pay periods of each month, in the amount of \$28.12 per biweekly pay period. If an eligible employee is on unpaid leave for a period of one (1) full pay period or more, the employee will not receive uniform allowance pay for that period. ~~Effective September 5, 2010 through June 25, 2011, employees shall be ineligible to receive uniform allowance payments.~~

2011 CITY OF SAN JOSE – POA NEGOTIATIONS

CITY PROPOSAL- HEALTHCARE DUAL COVERAGE

8.1 Health Insurance Coverage

8.1.5 ~~Effective January 1, 2011, a~~An employee may not be simultaneously covered by City-provided medical benefits as a City employee, and as a dependent of another City employee or retiree.

8.2 Dental Plan

8.2.3 ~~Effective January 1, 2011, a~~An employee may not be simultaneously covered by City-provided dental benefits as a City employee, and as a dependent of another City employee or retiree.

2011 CITY OF SAN JOSE – POA NEGOTIATIONS

CITY PROPOSAL– MODIFIED DUTY ASSIGNMENT

ARTICLE 39 MODIFIED DUTY ASSIGNMENT

~~Modified duty assignments shall be governed by the Consent Decree dated June 21, 2005, for the term of this agreement.~~

Effective July 1, 2011, the number of exempt officer positions shall be reduced to 0.

CITY PROPOSAL– CIVILIANIZATION/CONTRACTING OUT

ARTICLE 51 MODIFICATION OF BARGAINING UNIT WORK

~~51.1 City Attorney's Office. Officers and Sergeants assigned to the City Attorney's Office may be reassigned to the Police department but such positions will not be civilianized.~~

~~51.2 For optimal resource management, the City, in its discretion, may add civilian personnel to perform the work currently performed by sworn personnel provided the following:~~

~~51.2.1 The POA bargaining unit will not be reduced in number of positions as a result of that action,~~

~~51.2.2 The work is not normally associated with sworn Peace Officer status and does not require a P.O.S.T. certificate. Examples of duties which are normally associated with Peace Officer status include the following:~~

- ~~_____ criminal investigations~~
- ~~_____ patrol-related functions~~
- ~~_____ emergency services~~
- ~~_____ community policing~~
- ~~_____ training of sworn personnel on public safety-related issues~~
- ~~_____ processing of prisoners, and~~

~~51.2.3. The City conducts a meeting with the POA to discuss operational impact prior to making a final decision.~~

~~51.3 It is understood by the parties that Investigative Aides and Community Service Officers are applicable to subsection 51.2.2 of this provision.~~

~~51.4 During the term of the 2008-10 agreement no more than fifteen (15) sworn positions will be "civilianized" in accordance with subsection 51.2. Any further civilianization, as defined by this section, would be subject to the meet and confer process at the expiration of this MOA.~~

~~51.5 The parties will evaluate the effects and success of subsections 51.2-51.4 at the end of this agreement. Agreed upon modifications, if any, shall be included in the following agreement.~~

51.1 The City has the discretion to contract out and/or civilianize twenty positions during the term of this Agreement.

51.2 Any contracting out and/or further civilianization of positions represented by the POA during the term of this Agreement would be subject to the meet and confer process. The City will provide advance notice to the POA and the opportunity to demand to meet and confer regarding contracting out and/or further civilianization of work currently performed by bargaining unit members.

2011 CITY OF SAN JOSE – POA NEGOTIATIONS

CITY PROPOSAL– AIRPORT POLICE SERVICES OUTSOURCING

The POA will no longer be providing Airport Police Services and this service will be contracted out.

2011 CITY OF SAN JOSE – POA NEGOTIATIONS

CITY PROPOSAL – PUBLIC TRANSIT SUBSIDY (ECO-PASS AND SUBSIDIZED COMMUTER CHECK VOUCHER PROGRAM)

ECO-Pass

After calendar year 2011, the City will no longer provide employees an ECO-Pass. This means that any employee in possession of a 2011 ECO-Pass provided by the City may continue its use through calendar year 2011. Beginning calendar year 2012, the City will cease providing an ECO-Pass.

Commuter Check Program

Upon exhaustion of the current supply of Commuter Check Vouchers, the Vouchers will no longer be available to employees for purchase from the City. This means that the subsidized Commuter Check Voucher Program is eliminated after the current supply of Commuter Check Vouchers are exhausted.

CITY PROPOSAL– HOUSEKEEPING

5.2.9 Anti-Terrorist Training Pay

~~5.2.10.1 Each employee assigned to classifications represented under this Memorandum of Agreement who on an annual basis successfully completes the annual training offered by the Police Department in Police Anti-Terrorist Tactics shall be paid, for each biweekly pay period for which he/she is entitled to receive a salary under the provisions of this agreement, additional compensation equal to five (5%) percent of the employee's base pay. Each eligible employee must certify annually, every September 1, by the Police Department as having successfully completed the annual training in order to be eligible to continue to receive the pay. The incentive pay will begin the first day of the pay period following the date the Police Department submits certification to the City's Finance Department for the employees who have successfully completed the training. Employees will not be eligible for this premium until such time he/she successfully completes the annual training and submits verification to the Finance Department. No overtime compensation per Article 13.6 shall be provided for Officers' completion of this training.~~

~~5.2.10.2 This incentive pay shall be pensionable.~~

~~5.2.10.3 The five (5%) percent incentive pay will be included in salary surveys submitted by each party in future negotiations and arbitration, if applicable.~~

5.2.10.4] Effective March 22, 2009, the 5% Anti-Terrorist Training pay will be rolled into base pay in recognition of the additional training that all employees represented by the POA receive related to Police Anti-Terrorist Tactics. Employees must successfully complete the Police Department's annual Police Anti-Terrorist Tactics training each year as a condition of continued employment. There shall be no additional compensation for the completion of Anti-Terrorism Training.

ARTICLE 8 INSURANCE BENEFITS

8.1 Health Insurance Coverage

8.1.1 Eligible employees may elect health insurance coverage under one of the available plans for employee only or employee and dependents.

~~8.1.2 The City will pay ninety percent (90%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage and the employee will pay ten percent (10%) of the premium for the lowest priced plan for employee or for employee and dependent coverage. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan for employee or for employee and dependent coverage.~~

~~8.1.38.1.2 Effective December 26, 2010, t~~The City will pay eighty-five percent (85%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage and the employee will pay fifteen percent (15%) of the premium for the lowest priced plan for employee or for employee and dependent coverage. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan for employee or for employee and dependent coverage.

~~8.1.48.1.3 Co-pays for all available HMO plans shall be as follows~~A \$25 Co-pay plan shall be implemented for all HMO plans, including the following changes:

a. Office Visit Co-pay: \$10

~~b. Prescription Co-pay: \$5 for generic and \$10 for brand name (The Blue Shield HMO will continue to include \$15 non-formulary drug co-pay.)~~

~~c. Emergency Room Co-pay: \$50~~

~~Effective January 1, 2011, co-pays for all available HMO plans shall be as follows:~~

a. Office Visit Co-pay shall be increased to \$25.

b. Prescription Co-pay shall be increased to \$10 for generic and \$25 for brand name.

c. Emergency Room Co-pay shall be increased to \$100.

d. Inpatient/Outpatient procedure copay shall be increased to \$100.

8.3 Payment-in-Lieu of Health and/or Dental Insurance Program

8.3.1 The purpose of the payment-in-lieu of health and/or dental insurance program is to allow employees who have double health and/or dental insurance coverage to drop the City's insurance and receive a payment-in-lieu.

2011 CITY OF SAN JOSE – POA NEGOTIATIONS

8.3.2 ~~Employees who qualify for and participate in the payment in-lieu of health and/or dental insurance program will receive fifty (50%) percent of the City's contribution toward his/her health and/or dental insurance at the lowest cost single or family plan if the employee is eligible for family coverage. The City will retain the remaining fifty (50%) percent of that contribution.~~

~~Effective December 26, 2010, e~~Employees who qualify for and participate in the payment in-lieu of health and/or dental insurance program will receive the following per payperiod.

	Health in-lieu	Dental in-lieu
If eligible for family coverage	\$221.84	\$19.95
If NOT eligible for family coverage	\$89.09	\$19.95

ARTICLE 23 HOLIDAYS

23.1 ~~Subject to the provisions of Section 23.2 of this Article, each employee shall be entitled to receive, as a holiday benefit from and after July 14, 1985, in lieu of any other holidays (excepting any other days proclaimed or designated by the Council as holidays for which full-time employees will be entitled to holiday leave), 3.3847 hours of time off from duty for each biweekly pay period from and after July 14, 1985. Said holiday benefit shall be given to each employee at the time to be determined by the City Manager, in his/her discretion, or by the Chief of Police with the approval of the City Manager, either before or after the biweekly pay period for which such benefit is provided hereby, but in no event shall such benefit for any biweekly pay period be given before the beginning of the calendar year within which falls the biweekly pay period for which such benefit is given, nor later than twenty-six (26) biweekly pay periods immediately following the biweekly pay period for which such benefit is given.~~

~~23.2If, at any time on or before the expiration of twenty-six (26) biweekly pay periods immediately following the biweekly pay period during and for which any full-time employee becomes entitled to time off duty as a holiday benefit under the provisions of 23.1 of this Article, the City Manager shall find or determine that to give any such benefit would seriously impair the efficiency of the Police Department, the City Manager may order that such employee shall receive, in lieu of the holiday benefit to which he/she would otherwise be entitled for any biweekly pay period under the provisions of Section 23.1, as extra holiday compensation 5.623% of his/her regular salary during said biweekly pay period of full-time employment.~~

~~23.2.1The wage increase effective July 2, 2006 includes consideration specific to the settlement of the Holiday-in-Lieu grievance filed on August 2, 2002. The terms of this settlement are set forth in a separate agreement dated December 7, 2005.~~

23.3 Effective June 28, 2009, all classifications represented by the POA shall receive a 5.623% special pay adjustment in place of the holiday-in-lieu compensation provided in 23.2 above. Beginning June 28, 2009 and continuing thereafter, the holiday benefit in

2011 CITY OF SAN JOSE – POA NEGOTIATIONS

~~lieu compensation provided in 23.1 and 23.2 above~~ shall cease to apply to all classifications represented by the POA. The 5.623% special pay adjustment shall be added to the general wage increase effective on June 28, 2009, and shall not be compounded. It is expressly understood that the 5.623% special pay adjustment is compensation for all employees in classifications represented by the POA in lieu of holiday benefits. There shall be no additional holiday compensation.

ARTICLE 30 VACATIONS

30.1 Each eligible full-time employee shall be granted vacation leave with pay in accordance with the following:

30.1.1 Vacation Accrual. Each employee shall accrue a leave of absence with full pay for vacation purposes, in the amount specified below for each cycle of twenty-six (26) full biweekly pay periods immediately preceding December 31st, or portion thereof, in each year of his/her employment as specified below:

<u>Years of Service</u>	<u>Hours of Vacation per 26 Pay Period Cycle</u>
1st 5 years	80 hours
6th year - 10th year	120 hours
11th year - 12th year	140 hours
13th year - 14th year	160 hours
15th year or more	180 hours

30.1.2 ~~Carry Over of Vacation Leave~~

~~An employee may carry over to the next subsequent cycle of twenty-six (26) biweekly pay periods, not more than 200 hours of unused vacation leave, together with any earned vacation leave which he/she is prevented from using in the former cycle, during which it is accrued, because of service-connected disability. This carryover process shall expire at the end of the 2009 payroll calendar year.~~

~~Effective the first payperiod of payroll calendar year 2010, Employees shall not be allowed to accrue vacation in excess of two times their annual vacation accrual rate. Once the maximum accumulation has occurred, vacation will cease to accrue until the employee's vacation balance has fallen under their maximum vacation accrual amount.~~

~~Effective the first payperiod of payroll calendar year 2010, aAny employee who is already above two times their annual vacation accrual rate, will cease from accruing vacation until they have used enough vacation to bring them below their maximum accrual amount.~~

30.1.3 ~~Effective the first payperiod of payroll calendar year 2010, e~~Employees will only be allowed to use vacation that has already been accrued.

2011 CITY OF SAN JOSE – POA NEGOTIATIONS

~~7.1.4 — Each person who as of July 1, 1969, had been continuously employed as a San Jose Police Officer for a period of fifteen (15) years or more, who was awarded the Basic Certificate given by the Commission on Peace Officer Standards and Training of the State of California on or before February 15, 1970, and who, on or before March 1, 1970, filed with the Director of Finance proof that he/she had been awarded said Basic Certificate on or before February 15, 1970, shall be entitled to the compensation provided in Section 7.1.2.~~

Side Letter Agreement

BETWEEN

THE CITY OF SAN JOSE

and

SAN JOSE POLICE OFFICERS' ASSOCIATION

SICK LEAVE PAYOUT

The City and the San Jose Police Officers' Association agree to continue meeting and conferring on sick leave payout (Article 31.2) for current and future employees.

Either the City or Union may provide notice to the other of its request to meet and confer. Upon such notice, the parties shall continue these negotiations within ten (10) calendar days after the City or Union receives notice from the other. The City and Union shall meet and confer in good faith in an effort to reach a mutual agreement. If the parties are at impasse and no agreement is reached, the parties shall submit the issues for determination in accordance with the applicable provisions under the Employer-Employee Relations Resolution No. 39367 and/or City Charter Section 1111.

This Agreement is tentative and shall become effective only as part of the overall agreement on, and only during the term of, a successor Memorandum of Agreement.

FOR THE CITY:

FOR THE UNION:

Alex Gurza
Director of Employee Relations

Date

George Beattie
President, San Jose Police Officers' Association

Side Letter Agreement

BETWEEN

THE CITY OF SAN JOSE

and

SAN JOSE POLICE OFFICERS' ASSOCIATION

RETIREMENT REFORM

The City and the San Jose Police Officers' Association agree to continue meeting and conferring on pension and retiree healthcare benefits for current and future employees, including but not limited to healthcare benefits. The negotiations may include modification of healthcare (medical and dental) plans available to current employees, including but not limited to plan design.

Either the City or Union may provide notice to the other of its request to meet and confer. Upon such notice, the parties shall continue these negotiations within ten (10) calendar days after the City or Union receives notice from the other. The City and Union shall meet and confer in good faith in an effort to reach a mutual agreement. If the parties are at impasse and no agreement is reached, the parties shall submit the issues for determination in accordance with the applicable provisions under the Employer-Employee Relations Resolution No. 39367 and/or City Charter Section 1111.

This Agreement is tentative and shall become effective only as part of the overall agreement on, and only during the term of, a successor Memorandum of Agreement.

FOR THE CITY:

FOR THE UNION:

Alex Gurza
Director of Employee Relations

Date _____

George Beattie
President, San Jose Police Officers' Association

Side Letter Agreement

BETWEEN

THE CITY OF SAN JOSE

and

SAN JOSE POLICE OFFICERS' ASSOCIATION

LAYOFF

Either the City or Union may provide notice to the other of its request to meet and confer on modifications to the City's layoff process and procedure, including the provisions of the Layoff article in the Memorandum of Agreement. Upon such notice, the parties shall meet within ten (10) calendar days after the City or Union receives notice from the other. The City and Union shall meet and confer in good faith in an effort to reach a mutual agreement. If the parties are at impasse and no agreement is reached, the parties shall submit the issues for determination in accordance with the applicable provisions under the Employer-Employee Relations Resolution No. 39367 and/or City Charter Section 1111.

This Agreement is tentative and shall become effective only as part of the overall agreement on, and only during the term of, a successor Memorandum of Agreement.

FOR THE CITY:

FOR THE UNION:

Alex Gurza
Director of Employee Relations

George Beattie
President, San Jose Police Officers' Association

Side Letter Agreement

BETWEEN

THE CITY OF SAN JOSE

and

SAN JOSE POLICE OFFICERS' ASSOCIATION

SUPPLEMENTAL RETIREE BENEFIT RESERVE (SRBR)

The City and the San Jose Police Officers' Association agree to discuss the Supplemental Retiree Benefit Reserve (SRBR) program in the Police and Fire Department Retirement Plan.

Either the City or Union may provide notice to the other of its request to discuss the SRBR program. Upon such notice, the parties shall continue these discussions within ten (10) calendar days after the City or Union receives notice from the other.

To the extent that any change to the SRBR program is a mandatory subject of bargaining, the City and Union shall meet and confer in good faith in an effort to reach a mutual agreement. If the parties are at impasse and no agreement is reached on those issues that are a mandatory subject of bargaining, the parties shall submit such issues for determination in accordance with the applicable provisions under the Employer-Employee Relations Resolution No. 39367 and/or City Charter Section 1111.

This Agreement is tentative and shall become effective only as part of the overall agreement on, and only during the term of, a successor Memorandum of Agreement.

FOR THE CITY:

FOR THE UNION:

Alex Gurza Date
Director of Employee Relations

George Beattie
President, San Jose Police Officers' Association

UNION PROPOSAL- LAYOFF REINSTATEMENT LIST

22.6 Layoff Reinstatement Eligible List

22.6.1 The names of such persons laid off in accordance with the provisions of this Article shall be placed upon a reinstatement eligible list in inverse order of seniority; i.e., the person with the greatest seniority on the reinstatement eligible list for the classes affected shall be offered reinstatement when a vacancy exists in the affected class. In the event the person refuses the offer of reinstatement, such person's name shall be removed from the reinstatement eligible list unless such person has reinstatement rights under the provisions of this Topic to a higher class than the one in which the reinstatement is being refused.

22.6.2 In the event an employee accepts reinstatement to a lower class to which he/she is entitled, such person's name shall remain on the reinstatement eligible list for reinstatement to a lateral class provided such person, except for lack of seniority, would have been otherwise entitled to such lateral class at the time of the most recent layoff.

22.6.3 Any person who is reinstated to a class, which is the highest class to which he/she would have been entitled at the time of layoff, shall have his/her name removed from the reinstatement eligible list.

22.6.4 In the event a person on layoff cannot be contacted by the City through usual and customary channels within ten (10) working days, such person's name shall be removed from the reinstatement eligible list, providing, however, that such person within the two-year period specified herein may request that his/her name be replaced on the reinstatement eligible list and such person's name may, in the sole discretion of the Director of Human Resources, be returned to the reinstatement eligible list.

22.6.5 In no event shall the names of any person laid off pursuant to the provisions of this Article remain on a reinstatement eligible list for a period longer than ~~two~~ three years from the effective date of such person's most recent layoff.

UNION PROPOSAL- AGENCY FEE PROVISION

25. Agency Fee

25.1 Employee Rights

The City and the Association recognize the right of employees to form, join, and participate in lawful activities of employee organizations and the equal, alternative right of employees to refuse to form, join and participate in employee organizations. Neither party shall discriminate against an employee in the exercise of these alternative rights.

Accordingly, membership in the Association shall not be compulsory. An employee has the right to choose, either; to become a member of the Union; or, to pay to the Union a fee for representation services; or, to refrain from either of the above courses of action upon the grounds set forth in Section 25.5 listed below.

25.2 Employee's Obligation to Exclusive Representation

An employee who is a member of the Union on July 1, 2011, and any employee who becomes a member after July 1, 2011, shall maintain such membership.

Any person in a classification represented by the Association must, within thirty (30) days after their employment, submit to the City either:

1. A signed authorization to deduct dues as a member of the Union; or
2. A signed affidavit that the employee qualifies for an exemption as set forth in Section 6.6.5(1) below. In this case, the employee must designate a charity listed in Section 6.6.5(2) below to which the appropriate amount will be paid through payroll deduction.

If a person fails to make any of the designations set forth above within the thirty (30) day period, they will be given notice by the City that the Agency Fee deduction will be made beginning with the first full pay period following the expiration of the thirty (30) day period. The City and the Association agree that the Agency shop fee shall be paid in exchange for representation services necessarily performed by the Association in its capacity as exclusive bargaining agent and in conformance with its duty of fair representation of said employee who is not a member of the Association.

During the period June 1, 2012, through and including June 30, 2012, any employee who is a member of the Association may, by written notice to the Municipal Employee Relations Officer, or designee, resign such membership and change their status to the Agency Fee or exempt category in accordance with the provisions of this Agreement.

25.3 Definition of Agency Fee

The Agency Fee collected from non-member bargaining unit employees pursuant to Section 6.6.2 shall be limited to the Association (local, state, and national) annual costs for representing such employees. Such amount shall be those amounts for full-time and part-time employees as are certified to the Municipal Employee Relations Officer, or designee, from time-to-time by the designated officer of the Association as the Agency Fee.

25.4 Employees Exempted from Obligation to Pay Association

1. Any employee shall be exempted from the requirements of Section 25.2 above if such employee is a member of a bona fide religion, body or sect which has historically held conscientious objections to joining or financially supporting public employee organizations.
2. Such exempt employee shall, as an alternative to payment of an Agency Fee to the Association, pay an amount equivalent to such Agency Fee to either:
 - a. The United Way; or,
 - b. Combined Health Appeal (C.H.A.); or,
 - c. Any charity jointly agreed upon by the City and the Association. Such charities cannot be affiliated in any manner with the Association, nor can such charity be related to an established religious organization.

Employees requesting an exemption from paying an agency fee must submit a request in writing and provide verification of such membership in a qualifying bona fide religion, body or sect to the Municipal Employee Relations Officer, or designee. The Municipal Employee Relations Officer, or designee, shall provide notification to the Association of the determination within five (5) calendar days.

25.5 Hold Harmless

The Association shall hold the City harmless and shall fully and promptly reimburse the City for any reasonable legal fees, court costs, or other litigation expenses incurred in responding to or defending against any claims against the City or any of its agents, or employees, in connection with the interpretation, application, administration or enforcement of any section in this Agreement pertaining to Agency Fees. The existence of or extent of any indemnification obligation under this provision shall be subject to the grievance procedure spelled out in this Agreement.

25.6 Rescission of Agency Fee Provisions

Pursuant to Government Code Section 3502.5, this Agreement may be rescinded in its entirety by a majority vote of all the employees in the unit covered by this Agreement. It is understood and agreed that: (1) a request for such a vote must be supported by a petition containing the signatures of at least 30% of the employees covered by this Agreement; (2) such vote shall be by secret ballot;

and (3) such vote may be taken at any time during the term of this Agreement; but, in no event shall there be more than one vote taken during such term.

ARTICLE 35 — MAINTENANCE OF MEMBERSHIP

~~35.1 Except as otherwise provided herein, each employee who, on August 3, 2010, is a member in good standing of the Organization shall thereafter, as a condition of employment, maintain such membership for the duration of this Agreement, to the extent of paying the periodic dues uniformly required by the Organization as a condition of retaining membership.~~

~~35.2 Any employee who, on August 3, 2010, is not a member of the Organization or any person who becomes an employee after August 3, 2010, shall not be required to become a member as a condition of employment. Any such employee who thereafter becomes a member of the Organization shall thereafter maintain such membership for the duration of the Agreement except as otherwise provided herein.~~

~~35.3 Any employee who, on August 3, 2010, was a member of the Organization, and any employee who subsequently becomes a member may, during the period beginning May 1, 2011 through May 31, 2011, resign such membership and thereafter shall not be required to join as a condition of employment. Resignations shall be in writing addressed to the Director of Employee Relations with a copy to the Organization.~~

~~35.4 The Organization shall indemnify the City and hold it harmless against any and all suits, claims, demands and liabilities that may arise out of or by reason of the application of or implementation of the provisions of this Article.~~